

DEPARTMENT OF JUSTICE
SB 96: Improving the Ballot Measure ProcessExhibit No. 2Date 2-7-07Bill No. SB-96**Background**

The Montana Constitution guarantees the people's right to propose and vote on ballot issues. Recent election cycles, however, have been marked by litigation and voter confusion.

Since 1972, Montana citizens have proposed 266 ballot issues, including:

- 43 constitutional amendments
- 98 constitutional initiatives
- 82 initiatives
- 49 referenda

These ballot issues have been challenged in court 30 times.

In 2006 alone, there were six challenges to seven ballot measures.

- Not a single ballot measure went unchallenged. In one case, the constitutional sufficiency of two measures was challenged, while other challenges involved the petition process and the wording of the ballot statements.
- A legal challenge to three measures was not resolved before ballots were printed and voting machines were programmed. Ultimately, the measures appeared on voters' ballots and any votes cast were not counted.
- One challenge – to CI 151, a measure to increase the state's minimum wage – was still pending before the Montana Supreme Court more than six weeks after the November election.

SB 96 seeks to streamline and simplify each step of the ballot measure process.

Signature Gathering

Under existing law, signature gatherers can swear they "gathered" or "assisted in gathering" signatures to qualify measures for the ballot. Under SB 96, gatherers could no longer swear to "assisting" in gathering signatures.

- SB 96 would also prohibit ballot measure supporters from paying signature gatherers per signature.
- Signature gatherers would have to be Montana residents.

Ballots

The statement of purpose is carefully crafted to clearly explain the intent of the initiative or referenda. In many counties, however, the statement of purpose does not appear on the ballots on which Montanans cast their votes. SB 96 would eliminate "abbreviated" ballots and place the statement of purpose of each measure on the ballots voters use.

It would also provide for notice of conflicting ballot issues on the voters' ballots.

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Timelines

There are a number of confusing timelines in the ballot measure process.

SB 96 would condense the timeline for preparation of ballot statements and opinions of legal sufficiency to one 30-day period. It would lengthen the time for fiscal note preparation from six days to 10 days.

And SB 96 would ensure that the process begins and ends in the Secretary of State's Office. Under existing law, the text of a ballot measure must be submitted to legislative services. Under this bill, the text goes to legislative services only after submission to the Secretary of State.

Legal Review

Under SB 96, any challenge to the statement of purpose and legal sufficiency opinion provided by the attorney general would originate in the Montana Supreme Court. In the event the court revises a ballot statement, signatures gathered on petitions prior to the revision would be void.

Challenges to certification – due to illegally gathered signatures or a fraudulent canvass, for example – would have to be filed in Lewis & Clark County within 30 days of certification.

Summary

The ballot measure process is an important one, and Montana voters should have faith in every step of it. The changes proposed by SB 96 will help lessen voter confusion and simplify the process.

2007 Legislature
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Gazette Opinion: McGrath, Johnson show initiative in initiative reform

Montana voters endured so many affronts to the state initiative process this year that they may have questioned the integrity of this 100-year-old process of direct legislation. Montana's initiative and referendum laws should be reformed to protect this cherished right of the people to act on important issues when the Legislature doesn't or can't.

Legislation being introduced in the 2007 session by Sen. Carol Williams, D-Missoula, and Rep. Alan Olson, R-Roundup, addresses an urgent need. Senate Bill 96, drafted at Williams' request, would fix key problems that came to light during the 2006 campaign, when three initiatives were promoted by an organization backed by out-of-state funders whose identities weren't disclosed publicly. Paid professional signature-gatherers received big paychecks for collecting Montana voters' signatures. A lawsuit alleging fraud and other violations in the signature-gathering process for all three proposals and a second lawsuit challenging the text of one initiative were heard in district courts and the Montana Supreme Court.

After the Supreme Court invalidated those three proposals, lawsuits were filed to invalidate two other initiatives in the final weeks before the election. One lawsuit remains pending before the Supreme Court.

Attorney General Mike McGrath, a Democrat, and Secretary of State Brad Johnson, a Republican, jointly endorsed reform of the initiative process. The support of McGrath, Johnson, Williams and Olson confirms that the integrity of initiative and referendum isn't a partisan issue. It's a concern for all Montanans who value the rule of law and justice.

The proposed legislation would:

- Streamline the process of approval for initiative language by having it start and end in the Secretary of State Office. Legislative Services and the Attorney General's Office would still have to review language after it was submitted to the Secretary of State Office.
- Give the Supreme Court original jurisdiction to hear challenges to the petition statement or challenges to the attorney general's determination of legal sufficiency. (This would speed up the process that now requires all actions to start in District Court.)
- Require that signature-gatherers be Montana residents.
- Ban paying gatherers on a per-signature basis.
- Require signature-gatherers to swear that they "gathered signatures," eliminating the words

"or assisted in gathering" from the law to make the requirement clear.

- Require that the same 100-word statement of intent that is on petitions also be on the ballot.

The aim is to simplify and protect the initiative and referendum process for the benefit of Montanans. The Democrats and Republicans who have joined forces to draft this bill deserve the strong support of both parties and all 150 legislators. After the contentious 2006 campaign season, initiative reform is something everybody can agree Montana needs.

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Initiative fix certainly needed

By the Helena IR - 12/20/06

Few would deny that Montana's system for handling citizen initiatives deserved an "F" for fouling up during the last election campaign. Six different lawsuits alleging fraud were filed against seven initiatives on the ballot. Three of the initiatives were thrown out, and another, the minimum-wage increase, still is tied up in the state Supreme Court.

Now there's a bipartisan bill in the works to make repairs. Secretary of State Brad Johnson, a Republican, and Attorney General Mike McGrath, a Democrat, said Monday the proposed legislation would simplify the process.

One part of the lengthy bill would require that signature gathers be Montana residents, and would ban payments per signature. The measures that were tossed by the courts this year were found to have been tainted with improper conduct by gatherers from out of state who no longer are around to answer questions.

The bill would do much else, including requiring that the full, 100-word explanation of each measure be printed on ballots, and providing that legal disputes over those explanations would go directly to the high court to save time.

We think the effort is worthwhile, although it seems likely that discrimination against out-of-state workers could be open to challenge. In addition, the bill fails to address the need for better transparency about the source of the money behind some ballot measures. For instance, it was widely believed that the radical Libertarian measures rejected by the courts were bankrolled by New York investor Howard Rich, but supporters of the initiatives didn't have to say.

Nor does the bill speak to a tougher problem — deceptive characterizations of an initiative. For instance, one of the rejected initiatives this year claimed to be about preventing abuse of eminent domain, when the thrust of the measure actually was an all-out attack on land-use regulations.

Nonetheless, the bill proposed by Johnson and McGrath is a good start toward improving an initiative process that's too important not to fix.